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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	CC Docket No. 98-14
)	
Number Portability Query Services)	
)	
Ameritech Tariff F.C.C. No. 2,)	CCB/CPD 98-26
Transmittal No. 1149, as Amended)	
)	
Bell Atlantic Tariff F.C.C. No. 1,)	CCB/CPD 98-25
Transmittal No. 1041)	
)	
Pacific Bell Tariff F.C.C. No. 128,)	CCB/CPD 98-23
Transmittal Nos. 1927 and 1973)	
)	
Southwestern Bell Tariff F.C.C. No. 73,)	CCB/CPD 98-17
Transmittal Nos. 2638 and 2694)	

**OPPOSITION OF VANGUARD CELLULAR SYSTEMS, INC.
TO DIRECT CASE OF BELL ATLANTIC**

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits this opposition to Bell Atlantic's direct case in the above-referenced matter.^{1/} For the reasons described below, the Commission should reject certain elements of Bell Atlantic's Transmittal No. 1041 (the "Transmittal") as unjust and unreasonable.

^{1/} See Number Portability Query Services, *Order Designating Issues for Investigation*, CC Docket No. 98-14, released June 17, 1998 ("Designation Order"). Certain of the issues discussed in this opposition also are raised by the direct case of SBC Corp. To the extent that the Commission determines that Bell Atlantic's transmittal is unlawful in these respects, it also should reach the same conclusion as to SBC's submission.

I. INTRODUCTION

In a tariff investigation proceeding, the company under investigation has the burden of proving through its initial filing and its direct case that the new charges it seeks to assess are "just and reasonable."^{2/} Bell Atlantic cannot meet this burden because it unlawfully seeks to assess query charges to carriers for queries of calls to a NXX before the first customer in that NXX has requested to port a number.^{3/} Specifically, Bell Atlantic intends to turn on number portability in each of its NXXs as soon as the switches containing those NXXs have been upgraded to be number-portability ready. It then intends to recover the costs of this premature implementation from other carriers by charging for queries on calls to numbers in these NXXs, *regardless of whether any number actually has been ported*. To the extent that Bell Atlantic's gratuitous decision to activate portability prematurely necessitates these unnecessary queries, Bell Atlantic should foot the bill, not carriers like Vanguard that have no power to control Bell Atlantic's deployment plans.

This issue is particularly important because Vanguard and other wireless providers are forced to depend on third parties to make queries until such time as query capabilities are available from wireless equipment vendors. Indeed, wireless providers have no choice but to

^{2/} 47 U.S.C. § 204(a)(1).

^{3/} In its direct case, Bell Atlantic also seeks to avoid refund liability by arguing that it was unaware of the Commission's requirements at the time the Transmittal was filed. *See* Direct Case of Bell Atlantic, Number Portability Query Services, CC Docket No. 98-14, filed July 1, 1998, at 1 ("*Bell Atlantic Direct Case*"). This argument has no basis in law or fact. The suspension of the tariff specifically put Bell Atlantic on notice that refunds could be required, and a failure to require refunds would result in a windfall to Bell Atlantic. More to the point, Bell Atlantic plainly was aware of many of the issues in this proceeding because they were raised in the proceeding on Bell Atlantic's earlier number portability query tariff.

bear the burden of purchasing query service once numbers are ported from a switch. By imposing the costs of queries on wireless providers before those queries are necessary, the Transmittal unreasonably increases the burdens of portability.

II. BELL ATLANTIC'S PROPOSAL TO ASSESS QUERY CHARGES ON CALLS TO NON-PORTED NXX CODES IS UNREASONABLE AND INCONSISTENT WITH PREVIOUS PORTABILITY DECISIONS.

A. It Is Unreasonable for Other Carriers to Incur Fees for Gratuitous Queries Necessitated by Bell Atlantic's Business Decision to Prematurely Activate Portability.

The Commission has indicated that "a 'default routed call' situation would occur . . . when a call is made to a telephone number in an exchange with any ported numbers."^{4/} The default query is caused by an N-1 carrier's failure to fulfill its obligation to perform queries on calls to telephone numbers in exchanges from which at least one number has been ported. The N-1 carrier's failure to fulfill this responsibility justifies allowing the carrier that assumes the responsibility and conducts this query to assess a fee. Similarly, an N-1 carrier may make arrangements to have another carrier perform required queries. Bell Atlantic's business decision to incur costs in anticipation of a potential legal duty cannot trigger a legal obligation for Vanguard or any other carrier not a party to that business decision to conduct queries and, absent a legal obligation to conduct the query, N-1 carriers should not be required to pay Bell Atlantic for providing default query services.

^{4/} See Telephone Number Portability, *Second Report and Order*, 12 FCC Rcd 12281, 12325 (1997) ("*Second Report and Order*").

Indeed, where Bell Atlantic deploys technology that disrupts the proper delivery of calls to customers, Bell Atlantic should be forced to bear the costs associated with eliminating this disruption. If the Commission allows Bell Atlantic to assess default query charges to N-1 carriers under these circumstances, it essentially is authorizing ILECs to block the completion of calls and charge other carriers a fee for removing the block.

Moreover, if the Commission permits Bell Atlantic to assess the fees it proposes, the Commission would allow Bell Atlantic to rewrite Commission policy. In its *Number Portability Reconsideration Order*,^{5/} the Commission specified that local number portability should be deployed within each of the 100 largest Metropolitan Statistical Areas ("MSAs") but only on a switch-by-switch basis upon request by another carrier for the provision of portability.^{6/} Thus, Bell Atlantic is required to upgrade only "switches in which a competitor expresses interest in number portability"^{7/} The Commission intentionally elected limited deployment to avoid expenditures in areas within an MSA where there is no immediate need for local number portability services.^{8/} The Commission also specifically has determined that portability should not be activated until a request to port a number has been received.^{9/} The

^{5/} Telephone Number Portability, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 (1997) (*Number Portability Reconsideration Order*).

^{6/} *Id.* at 7273. As the Commission stated, "LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of number portability." *Id.* See also 47 C.F.R. § 52.23 (b)(1).

^{7/} *Number Portability Reconsideration Order*, 12 FCC Rcd at 7272.

^{8/} *Id.*

^{9/} *Second Report and Order*, 12 FCC Rcd at 12314.

Transmittal, however, enacts a different policy: portability is to be activated as soon as the carrier completes the necessary upgrades.

If the only carrier affected by the decision to activate portability prematurely was Bell Atlantic, there would be no conflict with the Commission's orders. But that is not the case: when Bell Atlantic activates portability in a switch, *every* interconnecting carrier must perform its own queries, contract with a third party for that function or pay Bell Atlantic's query charges. There is no other way to complete a call to a customer served by the switch and, therefore, no way to avoid the costs.

While Vanguard is not suggesting that the Commission prohibit Bell Atlantic from upgrading its system, the Commission also must require that Bell Atlantic avoid interfering with other carriers' attempts to complete calls in accordance with the Commission's rules. Bell Atlantic must be required to bear the costs of queries not required by the rules rather than passing its costs off on to other carriers.

As it did in response to comments on its earlier number portability query transmittal, Bell Atlantic claims that it would be less efficient and more costly for it to open each NXX individually.^{10/} It is not apparent that this is true, as comparisons with other portability query service tariffs demonstrate.^{11/} Even if that were the case, Bell Atlantic has no justification for

^{10/} See Bell Atlantic Direct Case at 8; *see also* Bell Atlantic Rebuttal in Support of Direct Case, Number Portability Query Services, CC Docket No. 98-14, filed February 27, 1998, at 2-3.

^{11/} See Ameritech Tariff F.C.C. No. 2, Transmittal No. 1149, filed March 31, 1998, at 2nd Revised Page 166.4.1 (stating that Ameritech will only query terminating calls to numbers in the network with NXX codes *from which a number is or has been ported* that have been designated as number portable)(emphasis added) ("Ameritech Tariff"); U S West Tariff F.C.C. No. 5, Transmittal No. 931, filed July 2, 1998, at Original Page 13-41.13 (indicating that U S

ignoring the Commission's prior determination. Indeed, the possibility that Bell Atlantic might be forced to expend more resources to achieve regulatory compliance is not sufficient justification for imposing charges for gratuitous queries on carriers, like Vanguard, that are captive to its whims. While Bell Atlantic may have had the discretion to make the business decision to deploy and activate number portability before portability was required under the rules, it does not have the discretion to begin charging for queries in an NXX until a number is ported. That limitation has been adopted by the Commission.^{12/} Moreover, if Bell Atlantic learned it would not be able to comply with the implementation requirements adopted by the Commission, it could have (but did not) sought reconsideration. Bell Atlantic's argument is particularly unconvincing because Ameritech and U S West, ILECs that face the same deadlines, are not raising the same timing issues and are not attempting to assess a fee for default queries with respect to NXXs where no number has ported.^{13/}

West, for calls to the company's end office switch, will launch a query only for ported numbers and, for calls to the company's tandem, query only calls to an NXX code with one or more ported numbers) ("U S West Tariff").

^{12/} SBC argues that the Commission intended for query charges to begin as soon as portability capability is installed. See Consolidated Response of Southwestern Bell Telephone Company and Pacific Bell to Order Designating Issues for Investigation, Number Portability Query Services, CC Docket No. 98-14, filed July 1, 1998, at 19-20 ("*SBC Joint Direct Case*"). This is incorrect. As shown above, the Commission squarely addressed the issue of when portability is to be activated in the *Second Report and Order*. SBC depends on an out-of-context interpretation of the word "available," which is used in the *Third Reconsideration Order*. Read in context, neither of the passages cited by SBC supports its claim and, in any event, the Commission has not repudiated its earlier determination.

^{13/} Direct Case of Ameritech, Number Portability Query Services, CC Docket No. 98-14, filed July 1, 1998 ("*Ameritech Direct Case*"); U S West Tariff.

Bell Atlantic's proposal to charge carriers a query fee for calls to non-ported NXXs uniquely burdens wireless carriers because wireless carriers, unlike landline carriers, cannot yet obtain the software upgrades necessary to perform database queries. As Vanguard previously has explained, the software necessary to enable wireless providers to perform database queries is not now available, and is not expected to be available until the end of 1998.^{14/} It appears that switch vendors have made the development and distribution of the software necessary for wireless carriers to perform database queries a priority second to development of the software necessary for full implementation of landline number portability. The combined effect of the vendors' business decision and the Transmittal would be to force Vanguard and other wireless providers to pay Bell Atlantic or a third party for query services for much longer than otherwise would be necessary, at a cost of millions of dollars. While Vanguard recognizes and acknowledges that it must pay for queries that are made in accordance with the Commission's requirements, it is patently inequitable to require such payments until activation of portability is required.

B. The Timing of Activation Is Key to Whether Wireless Carriers Incur Costs and How Much Cost They Incur.

Vanguard would be prejudiced by the timing of Bell Atlantic's activation of number portability even if it did not opt to perform its own queries. Vanguard is a medium-sized wireless service provider and most of its customers are concentrated in two area codes in the Bell Atlantic region. One of these area codes — 717 — is predominantly rural and many parts of 717

^{14/} See Vanguard Reply Comments, RM 9258, submitted May 18, 1998, Exhibit 2, Declaration of Sandy Kiernan at ¶¶ 4-8. A copy of Ms. Kiernan's declaration is attached hereto as Exhibit 1.

are unlikely to become subject to local competition in the near future. Thus, if Bell Atlantic were activating portability on a schedule that tracked its legal obligation to do so, many calls that Vanguard delivers within this area code likely would not require queries for many years, if ever. By activating portability in advance of its duty to do so, Bell Atlantic wastes resources in the precise manner the Commission and the industry sought to avoid when an NXX-by-NXX upgrade requirement was adopted.^{15/}

No matter how much Bell Atlantic attempts to wrap itself in the cloth of equitable cost sharing, the fact remains that the costs Bell Atlantic wants Vanguard and others to share are, at least at this time, unnecessary. Moreover, when the legal requirements for activating number portability are met, Vanguard and other providers will pay any lawful query fees, allowing Bell Atlantic to recover any reasonable costs.^{16/} Until that time, Bell Atlantic should be required to bear the cost of its own business decision and should not be permitted to pass that cost on to other carriers.

III. BELL ATLANTIC HAS UNLAWFULLY RESTRICTED ACCESS TO ITS NUMBER PORTABILITY DATABASE.

One way to more efficiently provision querying capability is for a wireless carrier with SS7 signaling capability to use the ILEC query database, launching query requests from the

^{15/} *Second Report and Order*, 12 FCC Rcd at 12314. See 47 C.F.R. § 52.26 (requiring that the local number portability administration comply with the recommendations of NANC contained in the Local Number Portability Administration Selection Working Group Report and its appendices).

^{16/} Indeed, to the extent that it was reasonable and prudent to follow the implementation path that Bell Atlantic has chosen, then all costs will be recovered after portability is activated in each switch; the only issue is when that recovery will commence and who will pay for it.

wireless carrier's own facility. It appears from the ILEC direct cases that ILECs expect that many carriers will elect to use only the databases and not ILEC query capabilities.^{17/} Indeed, Bell Atlantic's tariff contains a lower per query charge for carriers that connect directly to its LNP database.^{18/} While many wireless carriers are SS7 capable, the interswitch signaling protocol for wireless switches, IS-41, is not the same interswitch protocol used in the ILEC network, the Advanced Intelligent Network (AIN) protocol. Vanguard's engineers have been informed by Bell Atlantic that the Bell Atlantic LNP database signaling via AIN is incompatible with IS-41, thereby precluding Vanguard's use of the more efficient, lower priced direct interconnection with the database. Moreover, there is no technical reason why Bell Atlantic could not make its database available to wireless providers; it has just chosen not to do so.

^{17/} See *e.g.*, Direct Case of Ameritech at 10 and SBC Joint Direct Case at Appendix B.

^{18/} Bell Atlantic's charge for direct database queries is .0006580 per query, while either .0026250 (Tandem) or .0131360 (End Office) is the charge for queries performed on behalf of a carrier. See Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 1041, filed April 6, 1998, at 3rd Revised Page 890.23.

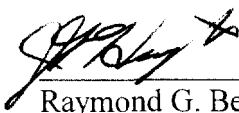
Because most wireless carriers' networks utilize the IS-41 protocol, any ILEC decision to accept only the AIN protocol is discriminatory, much like a refusal to interconnect.^{19/} Thus, the Commission should require Bell Atlantic and other ILECs with similar restrictions on the use of IS-41 to conduct database queries to justify their limitation of database access to carriers capable of using AIN.

IV. CONCLUSION

For the foregoing reasons, the Commission declare Bell Atlantic's Transmittal No. 1041 to be unlawful, order appropriate refunds and require modification of the Transmittal to conform to the Commission's policies and rules.

Respectfully submitted,

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By: 

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^{19/} See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Cellular Interconnection Proceeding), *Declaratory Ruling*, 2 FCC Rcd 2910 (1987) (requiring that the BOCs furnish interconnection with cellular carriers), *aff'd on reconsideration* 4 FCC Rcd 2369 (1989) (affirming the obligation of telephone companies to interconnect with cellular carriers).

EXHIBIT 1

DECLARATION OF SANDY KIERNAN


1. My name is Sandy Kiernan. I am Carrier Relations Manager at Vanguard Cellular Systems, Inc. I have a Bachelor's degree in Business from Marshall University. I also have completed significant course work towards a Master's degree in Business Administration. I have worked at Vanguard for about four and a half years.
2. I am responsible for overseeing interconnection matters, including implementation of local number portability. In addition, my group is responsible for all interconnection ordering, billing and technical issues. Consequently, I am familiar with the technical issues surrounding the implementation of local number portability. Specifically, I am responsible for overseeing the facilities upgrades necessary to query ported numbers and implement local number portability.
3. As the person primarily responsible for Vanguard's ability to query ported telephone numbers and to implement local number portability, I can attest that Vanguard is committed to making the upgrades necessary for number portability as soon as possible. Vanguard has, for instance, sought to obtain necessary software upgrades from its switch vendor on an expedited basis.
4. Vanguard's ability to perform the queries necessary to route ported numbers and to implement local number portability for its own customers depends on software upgrades to Vanguard's network facilities. Vanguard's current software does not support these functionalities. To my knowledge, no provider of wireless switching facilities now offers the ability to meet number portability requirements.
5. Vanguard's equipment vendor has informed Vanguard that the software necessary to query ported numbers will not be delivered until the fall of 1998. Vanguard has been selected as a "verification office" for the new software and thus, will be among the first to receive this technology from the vendor. If the equipment vendor meets this schedule, Vanguard expects to be able to perform its own queries on ported landline numbers by the end of 1998.
6. The unavailability of the software necessary to query ported numbers will prove costly to Vanguard. Until the software has been installed and the upgrade is operational, Vanguard must compensate other carriers to process local number portability queries. Thus, it is in Vanguard's best interest to perform this upgrade as soon as technically possible, and it is Vanguard's intent to do so.
7. Vanguard must purchase and install additional software to implement local number portability for its own customers. Vanguard's equipment vendor originally promised this software by early 1999 so that Vanguard could meet the June 30, 1999, regulatory deadline established by the FCC. Vanguard has been informed, however, that number portability functionality will not be included in the 1999 software revision. The vendor is

not committing to provide portability software until the following revision, which is scheduled for early 2000.

8. Vanguard has no feasible alternatives to obtaining a number portability upgrade to its current switching software. Vanguard does not have the resources to support standalone development of this functionality in house or through an independent contractor. Thus, Vanguard is dependent on its switch vendor to obtain number portability functionality. Without the necessary upgrades it is technically infeasible for Vanguard to provide any number portability functionality.
9. Implementation of a wireless-only overlay with takebacks would require Vanguard to devote enormous resources to reprogramming wireless handsets with the new area code. Vanguard's equipment vendor has not yet implemented over-the-air reprogramming, and even when that feature is available it will work only with certain advanced handsets that constitute about five percent of Vanguard's installed base. Even accounting for the small number of handsets that eventually will be programmable over the air, only 10 to 20 percent of Vanguard's customers would be able to reprogram their handsets. Thus, the overwhelming majority of Vanguard customers would have to bring their handsets to a service center for reprogramming a new area code required by a service-specific overlay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 1998


Sandy Kiernan

CERTIFICATE OF SERVICE

I, Joslin Arnold, a secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 10th day of July, 1998, a copy of the foregoing "Opposition of Vanguard Cellular Systems, Inc. to Direct Case of Bell Atlantic" was sent by hand delivery where indicated, or first class mail to the following:

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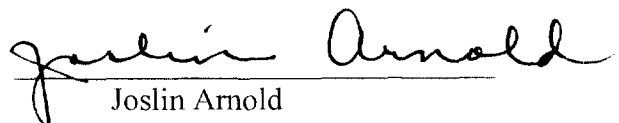
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